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AUTHOR Irish, Ann B.
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ABSTRACT

The lesson's goal is to enhance student understanding of basic civil rights and liberties through a comparison of the basic documents undergirding the laws of the United States and the Federal Republic of Germany. The lesson contains: (1) a quiz on the basic rights in the United States and West Germany; (2) an outline of the civil rights and liberties under the U.S. Constitution and the Basic Law of West Germany; (3) notes on the Basic Law; (4) major differences concerning rights and liberties in the two documents; and (5) guidelines for presenting the lesson. The unit can be introduced with the quiz to stimulate interest in the differences between the two countries. After taking the quiz, the students can use copies of the West German Basic Law and the U.S. Constitution to locate the correct answers. Following discussion of the similarities and differences between the countries, the quizzes are returned for a class review of the correct answers. (SM)

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CONSTITUTIONAL RIGHTS AND LIBERTIES IN THE UNITED STATES CONSTITUTION AND THE BASIC LAW OF THE FEDERAL REPUBLIC OF GERMANY

a two-day to one week lesson plan adapted from
John J. Patrick and Richard C. Remy, Lessons on the Constitution

by

Ann B. Irish, Ph.D.
Chairman, Social Studies Department
Vashon Island High School
Vashon, WA 98070

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LESSON PLAN AND NOTES FOR TEACHERS

By comparing civil rights and liberties in the basic documents of two nations, this lesson helps American students better understand their own Constitution. The lesson describes and compares the rights specified in the two documents and raises some questions about those in the US Constitution. See p. 9 for suggestions regarding adapting this lesson to nations other than the US and the Federal Republic of Germany (the FRG, or West Germany.)

Objectives

Students are expected to:

1. Speculate about the constitutional rights and liberties of people in the US and the FRG in response to a series of examples in a quiz.
2. Compare and contrast the rights and liberties in the Constitution and the Basic Law.
3. Indicate examples of rights that may be deduced from provisions in the Constitution and speculate about whether the Constitution does thus secure for people in the United States all the rights that are secured by the Basic Law of the Federal Republic.
4. Find the principles in the Constitution and the Basic Law that apply to the examples in the quiz.

Suggestions for Teaching the Lesson

The first part of this lesson (the quiz) can be used to develop student curiosity about the subject. As they think about the questions, the students should become interested in comparing the rights described in the Basic Law and the Constitution. After the students have completed the quiz, they can work individually with the Basic Law and the Constitution to compare the rights and liberties protected in the two documents. After this has been done, most students can quickly and accurately answer most of the quiz items that may have puzzled them at the beginning of the lesson.

Opening the Lesson

Ask students the meaning of constitutional rights and liberties. Ask them for examples of their legal rights and freedoms. Ask them why it is important to know about their rights and liberties.

Developing the Lesson

Distribute copies of "A Quiz About Rights and Liberties" to students. Indicate that they are to answer the questions to the best of their knowledge, and they will not be graded upon these answers. Make sure all students understand the directions, and then give them time to complete the quiz. Collect the quizzes and distribute a copy of the rights in the Basic Law to each student. Assuming that each student has a copy of the United States Constitution available, list on the board the sections of the Constitution to be consulted for this assignment. (See p. 3.) Instruct the students to study the Basic Law and the Constitution and to make lists as follows:

1. List all the rights that are specifically mentioned in both the Basic Law and the Constitution.
2. List all the rights that are specifically mentioned in the Basic Law but not in the Constitution.
3. List all the rights that are specifically mentioned in the Constitution but not in the Basic Law.

When this task has been completed, discuss the answers, or indicate to the class what the correct answers are. (This may be done immediately, or several days later if you grade the list-making assignment. Meanwhile, proceed to other class activities, perhaps showing films concerning civil liberties, for example.)

Concluding the Lesson

Return the quizzes with which students began the lesson and discuss the answers.

In this final discussion of the lesson, note the major differences concerning rights that do exist between the two documents. (See p. 9.) Make sure the students realize that real differences do exist among the rights in the two documents, but that despite this, civil rights and liberties are generally well protected in both nations.

SECTIONS OF THE UNITED STATES CONSTITUTION TO USE IN THIS LESSON

Article 1, Section 9, clauses 2 and 3
Amendments 1 through 10 (the complete Bill of Rights)
Amendment 13, Section 1
Amendment 14, Section 1

A QUIZ ABOUT CONSTITUTIONAL RIGHTS AND LIBERTIES

1. Does either the President of the US or the Chancellor of the FRG have the right to arrest and detain indefinitely members of certain political parties who are considered dangerous to the interests of the President or the Chancellor?
   (a) Both officials have this power
   (b) Only the President has this power
   (c) Only the Chancellor has this power
   (d) Neither official has this power
2. May a convicted murderer be sentenced to death?
   (a) Yes, in both nations (b) Only in the US
   (c) Only in the FRG (d) No, in neither nation
3. Do people have the constitutional right to organize peaceful demonstrations to complain about decisions of government officials?
   (a) Yes, in both nations (b) Only in the US
   (c) Only in the FRG (d) No, in neither nation
4. May the United States Congress or the German Bundestag pass a law requiring a person to be a Christian to be eligible to receive retirement or old age funds administered by the government?
   (a) Both Congress and the Bundestag may do this
   (b) Only Congress may do this (a) Only the Bundestag may do this
   (d) Neither Congress nor the Bundestag may do this
5. May authorities imprison someone who seems to be a threat to security, and keep him incarcerated indefinitely, even though the authorities have no evidence the person has broken a law?
   (a) Yes, in both nations (b) Only in the US
   (c) Only in the FRG (d) No, in neither nation
6. May Congress or the Bundestag pass a law requiring a certain person to pay a fine, because a majority in Congress or the Bundestag believes the person has violated a law, even though he has never been convicted of a crime?
   (a) Both Congress and the Bundestag may do this
   (b) Only Congress may do this (c) Only the Bundestag may do this
   (d) Neither Congress nor the Bundestag may do this
7. An unpopular group, which preaches violence and race hatred, has asked for a permit to have a parade in your city. Quite possibly, this parade would lead to violence, because many people in the town bitterly oppose this group. The city has denied a parade permit on the grounds that such a parade will cause violence. Did the city government decision violate the basic rights of this group?
   (a) Yes, in both nations (b) Only in the US
   (c) Only in the FRG (d) No, in neither nation
8. Are there ever any occasions upon which the government may prevent a magazine or newspaper from publishing information?
   (a) Yes, in both nations (b) Only in the US
   (c) Only in the FRG (d) No, in neither nation

9. A man committed a certain crime and, according to the law, received a light punishment. If members of Congress or the Bundestag believe that he should be punished more severely, and thus change the law making the punishment for this crime more severe, may the man then be given a new, more severe punishment?
(a) Yes, in both nations (b) Only in the US
(c) Only in the FRG (d) No, in neither nation

10. Children who belonged to an unpopular religion sold their church's magazines on the streets. The police stopped them because they were violating a state law forbidding children under age 12 to sell periodicals of any kind on the street. Leaders of the church said the police had violated their rights in the Constitution, or the Basic Law, to religious freedom. Was this the case?
(a) Yes, in both nations (b) Only in the US
(c) Only in the FRG (d) No, in neither nation

11. Leaders of an unpopular religious sect asked government officials for a permit to hold a meeting in a public park. The officials refused the request. Nevertheless the sect held a meeting in the park. Would their rights under the Constitution or the Basic Law be violated if the sect's leaders were arrested for holding this meeting without a permit?
(a) Yes, in both nations (b) Only in the US
(c) Only in the FRG (d) No, in neither nation

12. Police arrested a person for using a "sound truck" (with a loudspeaker) to spread political ideas, because people complained that he was disturbing them. Was this person's right to free speech violated?
(a) Yes, in both nations (b) Only in the US
(c) Only in the FRG (d) No, in neither nation

13. A man was found guilty of a crime and sentenced to prison for life. He argued that his rights had been violated because he had not been given the chance to be tried by a jury instead of a judge. Does he have the right to trial by jury?
(a) Yes, in both nations (b) Only in the US
(c) Only in the FRG (d) No, in neither nation

14. A male member of the armed services may claim his wife as a "dependent," and thus may gain certain housing and medical benefits for her. However, when a female member of the armed services tried to claim her husband as a "dependent" in order to gain similar benefits, her request was denied. Would this violate her rights either under the Constitution or under the Basic Law?
(a) Yes, under both documents (b) Only under the Constitution
(c) Only under the Basic Law (d) No, under neither document

15. Police officers came to the home of a man with a warrant for his arrest. They did not have a search warrant. Nonetheless, they forced their way into his house and searched it. They found evidence which was used at the man's trial to convict him. The convicted man claimed that the policemen violated his rights when they searched his home and took things from it without a warrant. Would this be true?
(a) Yes, under both the Constitution and the Basic Law
(b) Only under the Constitution (c) Only under the Basic Law
(d) No, under neither document

CIVIL RIGHTS AND LIBERTIES IN THE BASIC LAW OF THE FRG

Article 1 (1) The dignity of man shall be inviolable. To respect and protect it shall be the duty of all state authority.

(2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace, and of justice in the world.

(3) The following basic rights shall bind the legislature, the executive, and the judiciary as directly enforceable law.

Article 2 (1) Everyone shall have the right to the free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral code.

(2) Everyone shall have the right to life and to inviolability of his person. The liberty of the individual shall be inviolable. These rights may only be encroached upon pursuant to a law.

Article 3 (1) All persons shall be equal before the law.

(2) Men and women shall have equal rights.

(3) No one may be prejudiced or favored because of his sex, his parentage, his race, his language, his homeland and origin, his faith, or his religious or political opinions.

Article 4 (1) Freedom of faith, of conscience, and freedom of creed, religious or ideological, shall be inviolable.

(2) The undisturbed practice of religion is guaranteed.

(3) No one may be compelled against his conscience to render war service involving the use of arms. Details shall be regulated by a federal law.

Article 5 (1) Everyone shall have the right freely to express and disseminate his opinion by speech, writing and pictures and freely to inform himself from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films are guaranteed. There shall be no censorship.

(2) These rights are limited by the provisions of the general laws, the provisions of law for the protection of youth, and by the right to inviolability of personal honor.

(3) Art and science, research and teaching, shall be free. Freedom of teaching shall not absolve from loyalty to the constitution.

Article 7 (part) (1) The entire educational system shall be under the supervision of the state.

(2) The persons entitled to bring up a child shall have the right to decide whether it shall receive religious instruction.

(3) Religious instruction shall form part of the ordinary curriculum in state and municipal schools, except in secular schools. Without prejudice to the state's right of supervision, religious instruction shall be given in accordance with the tenets of the religious communities. No teacher may be obliged against his will to give religious instruction.

(4) The right to establish private schools is guaranteed...

Article 8 (1) All Germans shall have the right to assemble peaceably and unarmed without prior notification or permission.

(2) With regard to open-air meetings this right may be restricted by or pursuant to a law.

Article 9 (part) (1) All Germans shall have the right to form associations and societies.

(2) Associations, the purposes or activities of which conflict with criminal laws or which are directed against the constitutional order or the concept of international understanding, are prohibited.

(3) The right to form associations to safeguard and improve working and economic conditions is guaranteed to everyone and to all trades, occupations, and professions. Agreements which restrict or seek to impair this right shall be null and void; measures directed to this end shall be illegal . . .

Article 11 (1) All Germans shall enjoy freedom of movement throughout the federal territory.

(2) This right may be restricted only by or pursuant to a law and one in cases in which an adequate basis of existence is lacking and special burdens would arise to the community as a result thereof, or in which such restriction is necessary to avert an imminent danger to the existence or the free democratic basic order of the Federation or a Land, to combat the danger of epidemics, to deal with natural disasters or particularly grave accidents, to protect young people from neglect or to prevent crime.

Article 12 (1) All Germans shall have the right freely to choose their trade, occupation, or profession, their place of work, and their place of training. The practice of trades, occupations, and professions may be regulated by or pursuant to a law.

(2) No specific occupation may be imposed on any person except within the framework of a traditional compulsory public service that applies generally and equally to all.

(3) Forced labor may be imposed only on persons deprived of their liberty by court sentence.

Article 12a (part) (1) Men who have attained the age of eighteen years may be required to serve in the Armed Forces, in the Federal Border Guard, or in a Civil Defense organization.

(2) A person who refuses, on grounds of conscience, to render war service involving the use of arms may be required to render a substitute service. The duration of such substitute service shall not exceed the duration of military service. Details shall be regulated by a law which shall not interfere with the freedom of conscience and must also provide for the possibility of a substitute service not connected with units of the Armed Forces or of the Federal Border Guard.

Article 13 (1) The home shall be inviolable.

(2) Searches may be ordered only by a judge or, in the event of danger in delay, by other organs as provided by law and may be carried out only in the form prescribed by law.

(3) In all other respects, this inviolability may not be encroached upon or restricted except to avert a common danger or a mortal danger to individuals, or, pursuant to a law, to prevent imminent danger to public safety and order, especially to alleviate the housing shortage, to combat the danger of epidemics or to protect endangered juveniles.

Article 14 (1) Property and the right of inheritance are guaranteed. Their content and limits shall be determined by the laws.

(2) Property imposes duties. Its use should also serve the public weal.

(3) Expropriation shall be permitted only in the public weal. It may be effected only by or pursuant to a law which shall provide for the nature and extent of the compensation. Such compensation

shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute regarding the amount of compensation, recourse may be had to the ordinary courts.

Article 16 (1) No one may be deprived of his German citizenship. Loss of citizenship may arise only pursuant to a law, and against the will of the person affected only if such person does not thereby become stateless.

(2) No German may be extradited to a foreign country. Persons persecuted on political grounds shall enjoy the right of asylum.

Article 17 Everyone shall have the right individually or jointly with others to address written requests or complaints to the appropriate agencies and to parliamentary bodies.

Article 18 Whoever abuses freedom of expression of opinion, in particular freedom of the press [paragraph (1) of Article 5], freedom of teaching [paragraph (3) of Article 5], freedom of assembly (Article 8), freedom of association (Article 9), privacy of posts and telecommunications (Article 10), property (Article 14), or the right of asylum [paragraph (2) of Article 16] in order to combat the free democratic basic order, shall forfeit these basic rights. Such forfeiture and the extent thereof shall be pronounced by the Federal Constitutional Court.

Article 19 (part) (1) In so far as a basic right may, under this Basic Law, be restricted by or pursuant to a law, such law must apply generally and not solely to an individual case. Furthermore, such law must name the basic right, indicating the Article concerned.

(2) In no case may the essential content of a basic right be encroached upon.

Article 102 Capital punishment shall be abolished.

Article 103 (1) In the courts everyone shall be entitled to a hearing in accordance with the law.

(2) An act can be punished only if it was an offense against the law before the act was committed.

(3) No one may be punished for the same act more than once under general penal legislation.

Article 104 (1) The liberty of the individual may be restricted only by virtue of a formal law and only with due regard to the forms prescribed therein. Detained persons may not be subjected to mental nor to physical ill-treatment.

(2) Only judges may decide on the admissibility or continuation of any deprivation of liberty. Where such deprivation is not based on the order of a judge, a judicial decision must be obtained without delay. The police may hold no one on their own authority in their own custody longer than the end of the day after the day of apprehension. Details shall be regulated by legislation.

(3) Any person provisionally detained on suspicion of having committed an offense must be brought before a judge not later than the day following the day of apprehension; the judge shall inform him of the reasons for the detention, examine him, and give him an opportunity to raise objections. The judge must, without delay, either issue a warrant of arrest setting forth the reasons therefor or order his release from detention.

(4) A relative or a person enjoying the confidence of the person detained must be notified without delay of any judicial decision ordering or continuing his deprivation of liberty.

NOTES ON THE BASIC LAW OF THE FRG

The Basic Law, which is the constitution of West Germany, was adopted in 1949. A Land is the equivalent of a state in the United States. The translation appearing in this lesson was published by the Press and Information Office of the Federal Government, Bonn.

MAJOR DIFFERENCES CONCERNING RIGHTS AND LIBERTIES IN THE CONSTITUTION AND THE BASIC LAW

The death penalty is prohibited by the Basic Law.

There is no trial by jury in West Germany.

Separation of church and state is not included in the Basic Law.

Limitations on rights are specified in the Basic Law, whereas in the United States they do not appear in the Constitution. Instead, they have been set in court decisiions.

Many more rights are specifically mentioned in the Basic Law, but United States Supreme Court decisions have held that almost all of these rights are implied within the Constitution.

USING THIS LESSON TO COMPARE RIGHTS IN OTHER NATIONS' BASIC DOCUMENTS

In nations whose written constitutions include stated civil liberties

Follow the procedure outlined in the lesson, but use the civil liberty provisions in the desired constitution instead of those in the Basic Law of the Federal Republic of Germany. Another alternative would be to compare civil liberties in the basic documents of three nations, the US, the FRG and any desired third nation.

In nations whose written constitutions do not include specifically stated civil liberties

Begin the lesson with a discussion of rights and liberties and distribute "A Quiz About Rights and Liberties" to the students. After they have completed the quiz, the ensuing discussion should identify the basic civil liberties in the nation. Students should develop or be given a list or description of such civil liberties before proceeding to make their individual lists comparing the civil liberties in their nation with those in the United States. From this point the lesson may proceed as written.

In nations without written constitutions

Follow the procedure suggested for nations whose written constitutions do not include specifically stated civil liberties.

QUIZ ANSWERS RELATING TO THE UNITED STATES

1. The US President does NOT have this right. Article I, Section 9 of the US Constitution states that individuals have "the privilege of the writ of habeas corpus" which prevents a government official from arresting and holding individuals indefinitely without lawful reasons. Furthermore, Amendment I guarantees the right of individuals to belong to a political party that opposes the President.

2. Yes, in the US. Capital punishment is permissible in the United States at present. In a 1976 ruling (in the case Gregg v. Georgia) the Supreme Court ruled that the "punishment of death does not invariably violate the Constitution."

3. Yes, in the US. The 1st Amendment to the US Constitution guarantees this right.

4. Not in the US. The 1st Amendment would prohibit such a law.

5. This would be unconstitutional in the US. The privilege of the writ of habeas corpus protects an individual against arbitrary arrest and detention.

6. This would be unconstitutional in the US. Article I, Section 9 denies to Congress the power to pass a "bill of attainder." A bill of attainder law would punish an individual without a trial in a court of law. This section denies Congress the power to take away the legal rights of individuals to defend themselves in a court of law against criminal charges and/or official punishments.

7. In the US the group's rights would be violated. The courts have consistently upheld the right of unpopular groups to hold rallies, marches and meetings, as long as they are nonviolent. Furthermore, the courts have held that the government (local, state or federal) must give protection to unpopular speakers. Otherwise mobs could prevent people from exercising their constitutional rights. If an unpopular group petitions to hold a public meeting, the police must protect that group from the violence of the mob. Thus, in recent cases the Ku Klux Klan has been allowed to march in Austin, Texas, and the American Nazi Party has held marches in a number of cities, even though both groups often stimulate violent reactions from otherwise peaceful citizens.

8. Yes, in the US. The US Supreme Court has indicated that censorship before publication is constitutional only in very rare circumstances. National security, for example, may occasionally warrant this. See Snepp v. United States (1980).

9. He may NOT be given a new, more severe punishment in the US. Article I, Section 9 of the US Constitution denies Congress the power to pass an ex post facto law. The legal system can only judge and punish a person for breaking laws in effect at the time he or she committed any given act.

10. In the US the church leaders would be wrong. A state government may pass and enforce laws to protect children. This kind of action does not necessarily violate the constitutional right of freedom of religion, which the 1st Amendment guarantees. See Prince v. Massachusetts (1958).

11. Yes, in the US. The Supreme Court decided a government does not have unlimited power to allow or prevent peaceful and orderly public meetings. In this case, the officials had violated constitutional rights guaranteed by the 1st Amendment. See Niemotkov v. Maryland (1951).

12. Not in the US. The Supreme Court ruled that there are limits to an individual's constitutional right of free speech. Thus, a government may pass and enforce laws against noises that cause public disturbance. See Kovacs v. Cooper (1949).

13. Yes, in the US. The 6th Amendment guarantees this right.

14. Yes, in the US. The Supreme Court decided that this case involved a violation of the woman's constitutional right of "due process" (fair and equal treatment under the laws,) which the 5th Amendment guarantees. See Frontiero v. Richardson (1973).

15. Yes, in the US. The Supreme Court decided that this kind of search violates the constitutional guarantee against unreasonable search and seizure, a guarantee written into the 4th Amendment. See Chimel v. California (1969).

SOME EXAMPLES OF RIGHTS THE SUPREME COURT HAS STATED CAN OR CANNOT BE DEDUCED FROM RIGHTS IN THE U.S. CONSTITUTION

Equal rights for men and women

Recent Supreme Court decisions have held that the "equal protection of the law" provision of the 14th amendment guarantees equal rights regardless of sex. In certain cases, however, such as the military draft, different treatment is permitted. (Note that the 14th Amendment deals only with state law, not federal law. In many cases, however, the Supreme Court has held that the 5th Amendment's guarantee of due process includes a guarantee of equal protection. Thus the federal government, too, must adhere to equal protection of the law.)

Equal treatment regardless of parentage, homeland, language, etc.

"Equal protection of the law" also guarantees this.

Rights concerning religion

The 1st Amendment contains two statements concerning religion. The "establishment clause" indicates that government may favor no one religion over any other and that government and religion must be separate. Because of this, for example, the Supreme Court has ruled that holding prayers in public schools is unconstitutional.

Free exercise of religion means that people have the right to believe in whatever religious principles they wish.

Military service

Despite the 1st Amendment's religion clause, the Supreme Court has indicated that Congress may draft people who have religious scruples against military service. (Laws passed by Congress, however, have allowed exemptions on religious grounds.)

Freedoms involving radio, television, films, etc.

The 1st Amendment's "freedom of speech" covers speech in films, the Supreme Court has ruled, but in certain cases censorship (for example because of obscenity) is allowable.

The Court has ruled that licensing of radio and television stations is proper. The right of freedom of speech on radio and television is not as broad as the right for individual free speech, but government may not censor editorials on public stations.

Freedom of movement

The right to travel throughout the US is guaranteed by the 14th Amendment, since this right is one of the "privileges or immunities of citizens of the United States" mentioned in the Amendment.

Rights to property and inheritance

Property rights are protected, according to the Supreme Court, by the due process clauses of the 5th and 14th Amendments, which require laws to be fair, just and reasonable.

Limitations on civil liberties and rights

The rights guaranteed in the US Constitution are not unlimited. As a general rule, a particular right will be limited at the point where this right interferes with the rights of another person.